Bail Slip:-

The Appellant/Accused viz., Seelan @ Jayaseelan was directed to be released on Bail in and by the order of this Court dated 29.4.2003 made in Crl.MP.No.4891/2004 in Crl.A.No.1245 of 2003 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-07-2006

CORAM:

THE HON'BLE MR.JUSTICE M.KARPAGA VINAYAGAM
AND
THE HON'BLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 1245 of 2003

Seelan @ Jayaseelan ..Appellant

-vs-

State represented by
Inspector of Police,
F1,Avadi Police Station,
Avadi, Chennai . .. Respondent

This appeal is filed against the Judgment passed in S.C.No.511 of 2002 dated 09.07.2003 on the file of the Additional Sessions Judge(Fast Track Court No.IV) Poonamallee.

For appellant: : Mr.S.Ashok Kumar, Senior counsel
for Mr.C.R.Krishnamoorthy
For respondent: : Mr.V.R.Balasubramanian
Government Advocate(Cri.Side).

JUDGMENT

(Judgment of the Court was delivered by
A.C.ARUMUGAPERUMAL ADITYAN,J

This appeal has been preferred by the sole accused who was convicted and sentenced under Section 302 IPC to undergo life Imprisonment and to pay a fine of Rs.1,000/- in S.C.No.511 of 2002 on the file of Additional Sessions Judge(Fast Track Court No.IV) Poonamallee.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The facts in brief for the purpose of deciding this appeal are as follows:The accused Seelan @ Jayaseelan is the owner of an Autorickshaw, for which the driver is the deceased Devadas. Since the said driver Devadas failed to pay the hire charges properly to the accused, the owner of the said autorickshaw-the accused got back the possession of the autorickshaw from the deceased Devadas. Since the autorickshaw was taken from the possession of the deceased Devadas, the said Devadas started to disturb the accused from using the autostand. The deceased Devadas also threatened the accused Seelan @ Jayaseelan that he would cause damage to the autorickshaw, since he has failed to pay the monthly hire charges . Due to this enmity, the accused planned to do away with the life of the deceased. On the fateful day ie., on 16.4.1999 at about 7.30p.m.,, when P.W.2 and P.W.5 were watching the television at the Panchayat park, P.W.2 saw the deceased and the accused taking liquor together and thereafter P.W.5 left for his house. Meanwhile, P.W.2 saw the accused attacking the deceased on his face and head with a stick. The deceased fell down due to the injuries, he had sustained at the hands of the accused and thereafter, the accused dragged the deceased to the pump shed and dumped therein. P.W.5, when he returned after half an hour found the deceased lying dead and the accused was not present near the corpse. Thereupon, P.W.2 went and informed the Village President Manohar, about the occurrence. P.W.5 informed P.W.6 and asked him to convey the death of the deceased to P.W.1 and accordingly P.W.6 went and informed P.W.1 about the occurrence. The complaint was lodged by P.W.1, the brother of the deceased before F1 Avadi Police Station on 16.4.1999 at about 9.30.p.m., which was received by P.W.12 Inspector of Police and registered a case in Cr.No.401 of 1999 under Section 302 IPC. After registering the case, P.W.12, the Inspector of Police visited the place of occurrence prepared observation mahazar, rough sketch and recovered material objects from the scene of occurrence, conducted inquest before the Panchayatars, arrested the accused on 20.4.1999 at about 6.30 a.m., and recorded voluntary confession statement of the accused on the same day in the presence of P.W.8 and another witness by name Parthiban. On the basis of the said confession, Ex P14 recovered wooden log, M.O.11 under Ex P16 and also recovered blood stained T.Shirt M.O.12 and blood stained Pant M.O.13 under Ex P.17. The corpse of Devadas was sent for autopsy. P.W.4, the doctor, who had conducted autopsy on the body of the deceased on 17.4.1999 at about 11.45a.m., gave post mortem certificate ExP3. P.W.12 after completing the investigation has filed charge sheet against the accused under Section 302 IPC on 12.5.1999 before the Judicial Magistrate,No.II, Poonamalle, who took up the case on file in PRC 17/1999 and on appearance of the accused furnished copies under Section 207 Cr.P.C. and since the case is triable by Court of Sessions, he had committed the case to the Court of Sessions under Section 209 Cr.P.C.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. Before the Trial Court, P.Ws1 to 12 were marked. Exs P1 to 17 and M.Os 1 to 13 were marked. When questioned under Section 313 Cr.P.C., the accused has denied his complicity with the crime. Ex D1 is the Special report of the Grade I Constable, who had produced the corpse before the Doctor for post mortem, had recovered the pant and shirt from the corpse, had filed the special report along with the material objects collected from the body of the deceased after autopsy. Aggrieved by the findings of the learned Additional Sessions Judge, the accused has preferred this appeal.

4. Now the point for determination in this appeal is

1) Whether the prosecution has proved the guilt of the accused under Section 302 IPC beyond any reasonable doubt to warrant conviction?

5. The point:

The entire case of the prosecution hinges on the evidence of P.W2, P.W.3 and P.W.5. P.W.5 M.Gnanaraj, who had been examined to say that the deceased was last seen with the accused. According to P.W.5, he had seen both the deceased and the accused on 16.4.1999 at about 7.30p.m., and he left for his house and when he came back after half an hour, he saw the corpse of Devadas in the place where he saw both the deceased and the accused. He would further depose that Devadas was lying dead in a pool of blood with bleeding injuries on the face and that he has immediately informed P.W.6 Perumal to inform Damodaran, the brother of the deceased about the occurrence. P.W.1 Damodaran, the brother of the deceased, who had given Ex P1 complaint. According to P.W.1 , after knowing about the occurrence through P.W.6, went to the place of occurrence and saw his brother with injuries on the head , face and legs and P.W.5 Gnanaraj, who was present, there also informed that he had seen the deceased Devadas along with the accused, while they were taking drinks. He has further stated that at that time, P.W.2 Vasool, came there and he informed that the accused had beaten the deceased causing instantaneous death. Thereupon, he went to the police station and preferred Ex P1 complaint. P.W.2 the only eye witness to the occurrence would say that on 16.4.1999 at about 7.30p.m., after watching the television in the panchayat park, he left for his house, at that time, he saw both accused and the deceased taking drinks near the burial ground and that he saw while the accused assaulted the deceased Devadas with a wooden log on the head and face and that he immediately went to the village headman Manohar and informed about the occurrence and that the said Devadas died instantaneously, due to the blows received at the hands of the accused. The prosecution case suffers from the following infirmities.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(i) According to P.W.1 the eye witness, the accused had assaulted the deceased Devadas with a wooden log on the head and face and that he had immediately informed the Village President Manohar but the said Manohar was not examined in this case as a prosecution witness. The evidence of P.W.2 with regard to the injuries alleged to have been sustained by the deceased were not corroborated by the evidence of the doctor. The doctor who had conducted autopsy on the corpse of the deceased Devadas was examined in this case as P.W.4. Ex P3 is the post mortem which would reveal that the deceased had sustained as many as 22 injuries all over the body, particularly in the private parts 7th and 8th injuries are in the penics but according to P.W.2 , the accused had assaulted only on the head and face of the deceased. He has not spoken to about the assault of the accused on any other part of the body of the deceased at the time of occurrence. The evidence of the Doctor in the cross examination is clear to the fact that there is no possibility for causing 22 injuries as stated in Ex P3 with two blows with wooden log. So, it is clear from the evidence of P.W.4, the Doctor, that the above said injuries would not have been caused by a single person to the deceased.

(ii) According to P.W.5, the accused and the deceased were taking drinks at the place of occurrence but under Ex P5 Mahazar only one use and throw plastic tumbler was recovered. If there were two persons taking drinks, certainly they would have used two glasses because from the place of occurrence, it is seen from Ex P4 Mahazar, one empty beer bottle and only one empty brandy bottle were recovered along with one use and throw tumbler. It is not in evidence that both the deceased and the accused consumed liquor by using one tumbler.

(iii) M.O.9 is blood stained colour pant marked in this case. But Ex D1 Special Report shows that the pant recovered from the corpse by the post mortem constable was light brown colour pant and blood stained white half hand striped grey colour shirt. The said shirt was marked as M.O.10, whereas the pant was marked as M.O 9 is a cement colour pant containing blood stains but in Ex D1it is not stated that the brown colour pant was also blood stained.

(iv) According to P.W.2 the ocular witness, after committing the crime the accused had dragged the corpse of the deceased from the place of occurrence to a nearby pump set. If it is so then the track mark would have been mentioned in the observation mahazar. But in Ex.P.5 Observation Mahazar, there was no mention about the track mark. This would indicate that the evidence of P.W.2 that the body was dragged from the place where the attack was made to a distant place is not reliable.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(v) According to P.W.12 the Investigation Officer, P.W.5 has not stated during his examination under Section 161(3) Cr.P.C. that the accused and the deceased were seen with beer bottles. But P.W.5 while deposing before the Court, has stated that he had seen the accused and deceased sitting along with beer bottles. Further P.W.12, the Investigation Officer would depose in the cross examination that in his examination under Section 161(3) Cr.P.C., P.W.2 has not stated that the accused had beaten the deceased Devadas three times and also he has not stated that they consumed liquor(beer) but P.W.2, while deposing before the Court, while answering to the question put up by the Court, has stated that the accused had beaten deceased Devadas with a wooden log three times. Further P.W.2 has stated in the chief examination itself that both accused and the deceased were consuming liquor(beer).

6. So the sole ocular evidence of P.W.2 is not corroborated with the medical evidence in this case. Further there is also no strong motive alleged against the accused to commit the crime because for the non payment of hire charges for the autorickshaw , the accused had already got back the autorickshaw. Under such circumstances, we are of the considered view that the prosecution has not proved the guilt of the accused beyond any reasonable doubt and the appeal preferred by the accused is liable to be allowed for the reasons indicated above. Hence, we hold on the point that the prosecution has failed to prove the case beyond any reasonable doubt against the accused to warrant conviction and sentence under Section 302 IPC.

7. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant by the Trial Court under Section 302 IPC is set aside and the appellant is acquitted . Fine , if any paid, shall be refunded and the bail bonds executed shall stand cancelled.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Additional Sessions Judge, F.T.C.No.IV, Poonamallee
2. The District and Sessions Judge, Chenglepet.
3 The Judicial Magistrate No.II, Poonamallee.
3. -do- The Chief Judicial Magistrate ,Chengalpattu
4. The Superintendent , Central Prison, Vellore
6. The Inspector of Police, F1, Avadi Police Station,Avadi, Chennai(Cr.No.401/99)Veppam Kuppam Police Station
7. The Public Prosecutor, High Court, Madras-104
8. The Director General of Police, Mylapore, Madras
9. The District Collector, Chengalpattu.

+ 1 cc to Mr. C.R. Krishnamurthy, Advocate SR No. 33209

AK(CO)
SR/23.8.2006

Crl.A.No.1245/2003

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/